

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JOHN HADI,
Plaintiff,
v.
CAROLYN W. COLVIN, Acting
Commissioner of the Social Security
Administration,
Defendant.

Case No. 15-cv-01421-BAS(PCL)

ORDER:

- (1) **GRANTING MOTION FOR
LEAVE TO PROCEED IN
FORMA PAUPERIS (ECF NO.
2); AND**
- (2) **REFERRING TO
MAGISTRATE JUDGE FOR
REPORT AND
RECOMMENDATION**

On June 29, 2015, plaintiff John Hadi (“Plaintiff”) commenced this action against defendant Carolyn W. Colvin, Acting Commissioner of the Social Security Administration, seeking judicial review of the Commissioner’s final administrative decision denying Plaintiff’s application for Supplemental Security Income benefits under the Social Security Act. On the same day, Plaintiff also filed a motion seeking leave to proceed *in forma pauperis* (“IFP”). (ECF No. 2 (“IFP Mot.”).) For the reasons outlined below, the Court **GRANTS** Plaintiff’s IFP motion.

The determination of indigency falls within the district court’s discretion. *Cal. Men’s Colony v. Rowland*, 939 F.2d 854, 858 (9th Cir. 1991), *rev’d on other grounds*, 506 U.S. 194 (1993) (holding that “Section 1915 typically requires the reviewing court to exercise its sound discretion in determining whether the affiant has satisfied

1 the statute's requirement of indigency.”). It is well-settled that a party need not be
 2 completely destitute to proceed *in forma pauperis*. *Adkins v. E.I. DuPont de Nemours*
 3 & Co., 335 U.S. 331, 339-40 (1948). To satisfy the requirements of 28 U.S.C. §
 4 1915(a), “an affidavit [of poverty] is sufficient which states that one cannot because
 5 of his poverty pay or give security for costs...and still be able to provide himself and
 6 dependents with the necessities of life.” *Id.* at 339 (internal quotations omitted). At
 7 the same time, however, “the same even-handed care must be employed to assure
 8 that federal funds are not squandered to underwrite, at public expense,...the
 9 remonstrances of a suitor who is financially able, in whole or in material part, to pull
 10 his own oar.” *Temple v. Ellerthorpe*, 586 F. Supp. 848, 850 (D.R.I. 1984).

11 District courts, therefore, tend to reject IFP applications where the applicant
 12 can pay the filing fee with acceptable sacrifice to other expenses. *See e.g., Stehouwer*
 13 *v. Hennessey*, 841 F. Supp. 316, 321 (N.D. Cal. 1994), *vacated in part on other*
 14 *grounds, Olivares v. Marshall*, 59 F.3d 109 (9th Cir. 1995) (finding that a district
 15 court did not abuse its discretion in requiring a partial fee payment from a prisoner
 16 who had a \$14.61 monthly salary and who received \$110 per month from family).
 17 Moreover, “[i]n *forma pauperis* status may be acquired and lost during the course of
 18 litigation.” *Wilson v. Dir. of Div. of Adult Insts.*, 2009 WL 311150, at *2 (E.D. Cal.
 19 Feb. 9, 2009) (citing *Stehouwer*, 841 F. Supp. at 321); *see also Allen v. Kelly*, 1995
 20 WL 396860, at *2 (N.D. Cal. June 29, 1995) (holding that a plaintiff who was initially
 21 permitted to proceed *in forma pauperis* should be required to pay his \$120 filing fee
 22 out of a \$900 settlement). In addition, the facts as to the affiant’s poverty must be
 23 stated “with some particularity, definiteness, and certainty.” *United States v.*
 24 *McQuade*, 647 F.2d 938, 940 (9th Cir. 1981) (quoting *Jefferson v. United States*, 277
 25 F.2d 723, 725 (9th Cir. 1960)).

26 Having read and considered Plaintiff’s motion, the Court finds that Plaintiff
 27 meets the requirements in 28 U.S.C. § 1915 for IFP status. Plaintiff is unemployed
 28 and was last employed in December 2013. (IFP Mot. at p. 2.) He has \$300 in his

1 checking account, and does not own any real estate, valuable personal property, or
2 other investments. (*Id.*) He owns a 1996 Ford Aerostar van, which was donated to
3 him, and is worth \$0. (*Id.*) He sleeps in his van. (*Id.*) Plaintiff receives \$194 per
4 month in food stamps and \$330 per month in General Relief. (*Id.*) He has received
5 no other income or assistance during the past twelve months. (*Id.*) His expenses
6 include food, gas of \$100 per month, and laundry of \$5 every three weeks. (*Id.*)
7 Consequently, the Court finds that requiring Plaintiff to pay the court filing fees
8 would impair his ability to obtain the necessities of life. *See Adkins*, 335 U.S. at 339.

9 In light of the foregoing, the Court **GRANTS** Plaintiff's application to proceed
10 IFP (ECF No. 2). However, if it appears at any time in the future that Plaintiff's
11 financial picture has improved for any reason, the Court will direct Plaintiff to pay
12 the filing fee to the Clerk of the Court. **This includes any recovery Plaintiff may
13 realize from this suit or others, and any assistance Plaintiff may receive from
14 family or the government.**

15 Additionally, the Court **REFERS** all matters arising in this case to United
16 States Magistrate Judge Peter C. Lewis for a Report & Recommendation in
17 accordance with 28 U.S.C. § 636(b)(1)(B) and Local Rule 72.1(c)(1). If the parties
18 choose to file motions in this case, they shall contact Judge Lewis' chambers to
19 secure scheduling, filing, and hearing dates.

20 **IT IS SO ORDERED.**

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22 **DATED: July 10, 2015**


Hon. Cynthia Bashant
United States District Judge

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